

REMARKS

I. STATUS OF THE CLAIMS

Claims 1-49 and 58-68 are pending in the application, of which claims 1 and 49 are independent claims.

Due to an apparent clerical/administrative error the U.S. Patent and Trademark Office has not examined the entire application. The Office Action indicates that claims 1-57 are pending (which is contrary to the actual pendency of claims 1-49 and 58-68).

II. AMENDMENTS

The Specification has been amended to provide the outstanding serial number of priority U.S. Provisional Application Serial No. 60/794,729, filed April 25, 2006 (Attorney Docket No. 101-03). The amendment does not involve the addition of any new matter. For the purpose of convenience for the Examiner, the first page of the Official Filing Receipt of the priority U.S. Provisional Application Serial No. 60/794,729, filed April 25, 2006, is provided herein as Appendix A.

III. CORRECTION OF OFFICIAL FILING RECEIPT AND PRIORITY CLAIM

Correction of Filing Receipt

Applicant requests that the Official Filing receipt of the present application be corrected according to the marked-up version submitted herein as Appendix B.

Correction of Claim of Priority

Applicant respectfully submits that a proper claim for priority was filed on April 25, 2006 and hereby request that the records of the U.S. Patent and Trademark Office be revised to reflect accordingly. See, for example, Preliminary Amendment, Marked-up Substitute Specification and Clean Substitute Specification all of which were filed April 25, 2006.

IV. FAULTY OFFICE ACTION – RELIEF IS RESPECTFULLY REQUESTED

Due to an apparent clerical/administrative error the U.S. Patent and Trademark Office has not addressed the entire application in the Office Action. The Office Action erroneously indicates that claims 1-57 are pending (contrary to the actual pendency of claims 1-49 and 58-68). Accordingly, Applicant respectfully requests that an answer on the merits is neither warranted nor required, and respectfully request that a replacement Office Action is submitted anew. As evidenced by the PAIR website, see the Preliminary Amendment, Marked-up Substitute Specification and Clean Substitute Specification all of which were filed April 25, 2006.

V. APPLICANT RESPECTFULLY TRAVERSES REJECTION

Reconsideration of the Restriction Requirement in all aspects is requested in view of the following remarks.

Defective Office Action

The Office Action is incomplete and replacement Office Action should be provided thereby creating a new period for response. The Applicant believes that the Applicant is neither required nor obligated to provide a response at this point in time.

Examiner's Position

The Examiner appears to have subjected the claims to U.S. restriction practice. See, for example, pages 2-3 of the Restriction Requirement, where the Examiner states "The species are independent of distinct because claims to the different species recite mutually exclusive characteristics of such species." The quoted passage represents the U.S., rather than the PCT, standard.

Rules Governing Examination of Claims of Unity

MPEP 1893.03 states that prosecution of an international application which enters the national stage in the US under 35 U.S.C. 371(c) must proceed with unity of invention as under 37 C.F.R. 1.475. 37 C.F.R. 1.475 has no provision which allows restriction practice to revert to that used for domestic U.S. applications; thus Examiner must proceed with the requirement for unity of invention as defined in this section.

Unity of invention under PCT Rule 13 is satisfied when there is a technical relationship among those inventions defined by the claims which involves "one or more of the same or corresponding special technical features". PCT Rule 13 does not prohibit product and process of use claims from being examined in a single application, even if both the claimed product and process can be used separately, in materially different ways. Rather, PCT Rule 13 allows for such claims to be examined together in a single application if all claims contain the same or similar technical feature. This unifying special technical feature is that which defines a contribution which each of the claimed inventions, considered as a whole, makes over the prior art. PCT Rule 13.2 and the PCT Administrative Instructions, Annex B, Part 1(b).

Applicants point out that PCT Rule 13.2 states that "[t]he expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art." (emphasis added). Applicants respectfully submit that Examiner has not considered the claims as a whole. 37 C.F.R. 1.475(a) requires that the special technical must be considered as a whole over the prior art.

Additionally, PCT Rule 13.3 requires that the determination of whether groups are so linked as to form "a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or an alternative within a single claim." (emphasis added). Thus, PCT Rule 13.3 reinforces the requirement of considering the claims as a whole.

Where a single patent application contains claims of different categories, the claims have unity of invention when claims contain a special technical feature, and the claimed manufacturing process is specifically adapted to produce the claims product. A process is "specifically adapted" for the manufacture of a claimed product when that process inherently results in the product. PCT Administrative Instructions, Annex B, Part 1(e)(1). According to the PCT Administrative Instructions, Annex B, Part 1(e)(ii), "[t]he words "specifically adapted" are not intended to imply that the product could not also be manufactured by a different process. Thus, the Examiner need only consider whether claims of different categories contain the same or corresponding special technical feature, and whether the claimed process of manufacture inherently produces the claimed product.

Accordingly, the unity of invention is evidenced by the PCT Written Opinion (See Appendix C submitted herein) which was issued April 3, 2006, whereby unity of invention was satisfied and all the pending claims were found to meet both the novelty and inventive step requirement.

No Serious Burden

Even assuming *arguendo* that species are independent or distinct, restriction is not proper because there is no serious burden on the Examiner in searching the various groups.

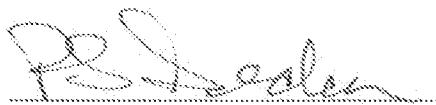
According to MPEP § 803 (emphasis added), “a serious burden...may be *prima facie* shown if the examiner shows *by appropriate explanation* either separate classification, separate status in the art, or a different field or search as defined in MPEP § 802.02.” Examiner has given no explanation to support a contention that searching the groups together poses a serious burden. Applicant respectfully request that the Examiner clearly articulate reasons and/or provide examples in support of this position.

VI. CONCLUSION

For the foregoing reasons, Applicant shall await to see if the restriction is dropped in its entirety or a new one issued. Due to the totality of the circumstances and the erroneous Office Action as evidenced by particulars of this response, Applicant believes it is entitled to and hereby elects, with traverse, all groups, pending claims and figures.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited contact the Applicant's attorney at the telephone listed below:

Respectfully submitted,



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Robert J. Decker, Reg. No. 44,056
79 Teakwood Drive
Charlottesville, VA 22911
(Telephone) 434-989-5926
(Fax) 434-973-7817